

PURPOSE

Each state operated and private, contracted juvenile justice residential treatment facility director or designee(s) is responsible for investigating incidents involving youth, both for rule violations and allegations of sexual abuse or harassment.

DEFINITIONS

First Responder

Any/all agency staff to whom an incident or report of alleged sexual abuse, sexual harassment or any other form of abuse/neglect or rule infraction of youth is reported. This includes staff's own observation or suspicion, direct report (verbal or written) from youth or third parties of abuse or neglect in accordance with mandated reporting laws and agency policies.

Immediately

Done at once or with minimal delay.

PREA Compliance Manager

Employee or upper-level designee who has sufficient time and authority to develop, implement and oversee facility efforts to comply with the Prison Rape Elimination Act (PREA) juvenile facility standards.

PREA Investigator

Designated individuals employed with the facility that have completed specialized training for investigating allegations of sexual abuse and harassment. Investigators conduct administrative investigations of sexual abuse or sexual harassment allegations of staff-on-youth and youth-on-youth incidents.

Security Staff

Employees primarily responsible for the supervision and control of youth in housing units, recreational areas, dining areas and other program areas of the facility. 28 CFR 115.5.

Substantiated Allegation

An allegation that was investigated and determined to have occurred. 28 CFR 115.5.

Unsubstantiated Allegation

An allegation that was investigated, and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred. 28 CFR 115.5.

Unfounded Allegation

An allegation that was investigated and determined to have not occurred. 28 CFR 115.5.

Administrative Investigation

An investigation conducted by the facility's trained internal investigator.

Criminal Investigation

When an allegation is criminal in nature and law enforcement is investigating.

Preponderance of Evidence

Evidence which is of greater weight or more convincing than evidence which is offered in opposition to it.

See [JRG, JJ Residential Glossary](#).

**RESPONSIBLE
STAFF**

State run and private, contracted juvenile justice residential facility director or designee(s) and the PREA compliance manager(s).

PROCEDURE

The facility director or designee(s) and the PREA compliance manager(s) are to ensure that grievances and rule infractions are promptly investigated. The facility director or designee(s) and the PREA compliance manager(s) are to develop and implement standard operating procedures for investigations. At a minimum, procedures must contain the following components:

**GRIEVANCE,
ALLEGATION OR
OBSERVATION**

The residential facility director or designee is required to ensure that grievances and allegations or rule infractions are promptly assigned to the appropriate person/agency for investigation, including but not limited to:

- Internal administrative investigator.
- PREA compliance manager.
- PREA investigator.
- The Division of Child Welfare Licensing (DCWL).
- Centralized Intake.
- Local law enforcement.

**Facility Incident
Reports**

See [JRM 530, Incident Reports](#) for incident report requirements and documentation.

**Initiating an
Investigation**

Initiate an investigation and make referrals to appropriate external agencies when a grievance, allegation or observation includes:

- Facility rule violations. Staff or youth criminal misconduct are referred to local law enforcement.
- Licensing rule violation(s) are referred to the facility's Division of Child Welfare Licensing (DCWL) consultant.
- Child or adult abuse, neglect or exploitation. See [JRM 512, Abuse and Neglect Reporting](#), for requirements on reporting suspected child and adult abuse/neglect to Centralized Intake.
- Youth-on-youth or staff-on-youth sexual abuse or harassment. Notify the PREA compliance manager and PREA investigator.

State Run Facilities Only

The facility director or designee must inform director of Juvenile Justice Programs, who will make appropriate assignment of investigative responsibilities and determine involvement of labor relations.

The investigator will serve as the liaison during the investigation and may conduct a concurrent administrative investigation to any criminal investigation that may be conducted.

GENERAL INVESTIGATIONS

Each state run and private, contracted juvenile justice residential facility director and designee(s) are required to investigate all allegations, grievances or observations in the following manner, but not limited to:

- Allowing access to premises, staff, youth and records as necessary in order to conduct a thorough and effective investigation.
- Upon request, the facility director or designee shall prepare and provide a copy of documentation requested, or at the discretion of the investigator, allow the investigator to make necessary copies of relevant documentation.
- All facility staff involved in the investigation must fully cooperate. Failure to do so may result in possible disciplinary action.

Each investigation needs to include, but is not limited to:

- An interview with the reporter and first responder.
- Interview with alleged victim.
- Interview with all witnesses and others who may provide relevant information.
- Interview with alleged perpetrator.
- Obtaining written statements from all involved to obtain additional information or to provide findings relevant to the investigation.
- Review of case records of youth involved when pertinent to the investigation.
- Review of investigation into the same allegation conducted by law enforcement, children's protective services and licensing, when available.

- Visiting the site where the alleged violation/complaint took place.
- Review of pertinent statutes, administrative rules, policies and procedures.
- An accurate record of investigation activities as the investigation progresses.

Note: If allegations include potential abuse, neglect, exploitation, criminal behavior or licensing violation, interview must be coordinated with the appropriate investigative agency.

Coordination Requirements

When Michigan Department of Health and Human Services (MDHHS) Centralized Intake (CI) determines an allegation of abuse, neglect or exploitation warrants an investigation, the PREA Investigator must coordinate with all other investigative agencies involved in the investigation of the allegation. Investigative agencies that may be involved in the investigation of the allegation include:

- Children's Protective Services-Maltreatment in Care (CPS-MIC), local CPS or tribal CPS will investigate allegations of child abuse and/or neglect.
- Law enforcement, including tribal or military law enforcement when applicable, will investigate criminal allegations.
- A licensing investigation may be completed by a DCWL licensing consultant to investigate compliance with child caring institution (CCI) licensing rules.
- The Michigan Department of Health and Human Services (MDHHS) local office and/or juvenile justice specialist (JJS) will investigate the continued appropriateness of the youth's placement. If continued placement is not appropriate, but the child's health or safety is not at imminent risk, the JJS must notify the facility director or designee of the intent to move the youth 14 days prior to the placement change.

When conducting PREA investigations for which there is CPS-MIC involvement, the PREA investigator must coordinate investigations and requests and receive copies of CPS investigation reports (properly redacted). For more information on CPS-MIC coordination efforts, see [PSM-714-5, Maltreatment in Care](#).

The facility director or designee must maintain contact with each agency investigating the allegations through completion of each investigation and/or prosecution if applicable.

Investigation Information

The facility director or designee must ensure the assigned investigator has access to:

- Staff involved in allegation(s).
- Youth involved and housing location.
- Date/time/location of incident.
- Potential witnesses.
- Any information that may prove or disprove the allegation or incident.
- Evidence collected at the scene, described in detail including chain of custody and evidence storage (if applicable).
- Photographs or videos related to the incident (if applicable).
- Copies of incident report(s) related to the incident.
- Any other related supporting documentation.

Suspected Abuse/Neglect/Exp loitation

The facility director or designee is responsible for implementing investigation procedures for suspected abuse/neglect or exploitation occurring within a facility and/or involving facility staff.

Upon receipt of an allegation of abuse, neglect or exploitation, the first responder ensures all of the following:

- Immediate action to ensure safety of the youth. This includes separating the alleged staff from the youth and ensure, as directed by administration, that the staff is not in contact with the alleged victim in the facility.
- State run facility director or designee immediately notifies the Director of Juvenile Justice Programs.

Note: If the state facility director or designee is the subject of the report, the facility director or first responder immediately informs the Director of Juvenile Justice Programs, who will assign investigative and reporting duties and notify the facility's DCWL consultant.

If the private, contracted facility director or designee is the subject of the report, a designated facility supervisor or manager must immediately inform the facility's DCWL consultant.

- A physician examines the youth if physical abuse involving staff is alleged to have occurred or is evident.
- If the abuse, neglect or exploitation includes PREA allegations, notify the facility PREA compliance manager.
- The facility director or designee conducts an internal administrative investigation of the incident as soon as possible after the initial report of abuse/neglect is received. The facility director or designee ensures:
 - Statements (written, signed and dated) are obtained from all available witnesses and individuals pertinent to the investigation within 24 hours.

For State Operated Facilities Only

- Within five business days of the completion of the investigation, a copy of the administrative investigation final report is submitted to the DCWL consultant and the Director of Juvenile Justice Programs.
- Upon request, the facility director, designee or designated manager provides all documents pertinent to the investigation to the DCWL consultant and the Director of Juvenile Justice Programs.

**Suspected
Harassment**

All employees are required to report any discriminatory harassment of staff-on-youth or youth-on-youth. The facility director or designee is required to investigate allegations of discriminatory harassment. See [APR 211, Discriminatory Harassment](#) for more information.

After receiving a report, the facility director or designee shall detail in writing the unwelcome conduct that is alleged to constitute discriminatory harassment. The investigative report must include:

- The signed statement provided by the reporter/first responder and any youth allegedly harassed or notation of any refusal to submit such a statement.
- The types of conduct alleged.
- The names of witnesses and statements.
- The dates on which the alleged harassment occurred.

Child Injury/Death

See [SRM 172, Child/Ward Death Alert Procedures and Timeframes](#) for reporting requirements for child injury/death.

PRISON RAPE ELIMINATION ACT (PREA) INVESTIGATIONS

In addition to the general investigation duties outlined in this policy, the PREA compliance manager and facility director are responsible for ensuring that an administrative investigation is completed by a trained PREA investigator, for all allegations of sexual abuse and sexual harassment.

Each incident of alleged or reported sexual abuse or sexual harassment must be fully investigated. 28 CFR 115.371. Evidence collected must be maintained under strict control.

Apart from reporting to designated supervisors and designated state or local service agencies, staff must not discuss or reveal any information related to a sexual abuse report to anyone other than to the extent necessary, to make treatment, investigation and other security management decisions. 28 CFR 115.361(c).

The facility director or designee is responsible for developing, documenting and maintaining agreements made with entities external to the facility. Documentation of a Memorandum of Understanding (MOU) or attempts to obtain an MOU with outside investigators that conduct allegations of sexual abuse investigations that are criminal in nature need to be maintained.

Pursuant to Prison Rape Elimination Act, National Standards for Juvenile Facilities, 28 CFR 115.371(d), the facility will not end an investigation if the source of the allegation recants the allegation. The facility will not end an investigation due to the alleged victim or alleged perpetrator leaving the facility. 28 CFR 115.371(k).

First responders must not extensively interview victims or alleged perpetrators for incident details beyond obtaining the basic information necessary to determine further actions that must be taken, such as separation of victims and perpetrators, facilitating for victim medical needs, etc. 28 CFR 115.334. Sexual activity between youth that does not involve coercion is considered a facility rule violation.

Investigators will not make determinations based on the credibility of the alleged victim. 28 CFR 115.371(f). Substantiation of an allegation will be based on preponderance of the evidence 28 CFR 115.372. Youth sexual activity may not be deemed sexual abuse if the activity was not coerced. 28 CFR 115.378(g).

First Responder Actions

All first responders are required to follow the First Responder Action steps outlined in the MDHHS-5809-PREA, Prison Rape Elimination Act (PREA) Investigation Tool.

Supervisor Actions

Supervisors are required to follow the Supervisor Action steps outlined in the MDHHS-5809-PREA-Prison Rape Elimination Act (PREA) Investigation Tool.

Facility Director or Program Manager Actions

Facility directors or program managers are required to follow the Facility Director or Program Manager Action steps outlined in the MDHHS-5809-PREA-Prison Rape Elimination Act (PREA) Investigation Tool.

PREA Investigation Responsibilities

The PREA Investigator is responsible for ensuring all of the following occur and must be documented on the MDHHS-5810-PREA, Prison Rape Elimination Act (PREA) Investigation Report:

- Review of the initial information/evidence and identify the nature of the incident as either criminal or administrative.
- The alleged victim and alleged perpetrator must be separated, kept isolated from each other and prevented from communicating.
- Monitoring must employ multiple methods, such as face-to-face check-ins with the youth or staff casual observation, log reviews, and incident report reviews.
- If the alleged assault occurred within the past 96 hours, the alleged victim must be offered a forensic medical examination to be performed by a SANE/SAFE certified provider or a qualified physician.
- The area where the suspected assault took place is sealed off until investigators can gather evidence.
- If the abuse occurred within a time period that allows for the collection of physical evidence;
 - **Request** that the alleged victim does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing cloths, urinating, defecating, smoking, drinking, or eating. 28 CFR 115.364(a)(3).
 - Ensure that the alleged perpetrator **does not** take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking or eating. 28 CFR 115.364(a)(4).

Note: If the first responder is not a direct care staff (for example, medical personnel, therapist etc.), the responder is responsible for **requesting** that the alleged victim not take any actions that could destroy physical evidence, and then notify direct care staff. 28 CFR 115.364(b).

- Notify the appropriate investigative agencies:
 - The facility director or designee for administrative investigations.
 - The local law enforcement agency for staff and youth criminal misconduct.

For State Operated Facilities Only

- MDHHS Bureau of Legal Affairs for staff conduct that is criminal in nature.
- The MDHHS office of labor relations regarding personnel action.
- Identify potential witnesses and subjects.
- Determine if any additional information, documentation, and evidence is required.
- Review relevant policies and operating procedures.
- Gather and preserve all evidence and supporting documents related to the incident.
- Store evidence in a manner that best ensures the chain of custody.
- Interview witnesses and suspects.
- Obtain written statements from all suspects and witnesses to the incident whenever possible.
- Document findings in a written report.

Administrative Investigation

Pursuant to the Prison Rape Elimination Act, Juvenile Facility National Standards, 28 CFR 115.371-115.373, procedures for investigations must:

- Address whether investigations will be conducted by the facility or by a separate investigation office. Where a separate investigation office is used, that office must be identified in the procedure.

- Emphasize promptness, thoroughness and objectivity.
- Include an effort to determine whether staff actions or lack of action was a factor in the abuse.
- Address the gathering and preservation of direct and circumstantial evidence, including any available physical and DNA evidence and available electronic monitoring data.
- Require the use of a preponderance-of-evidence standard in determining whether allegations of sexual abuse or harassment are substantiated.
- Document efforts to provide SAFE or SANE providers.
- As requested by the victim, a victim advocate, qualified staff member, or qualified community-based organization staff member shall accompany and support the victim through the forensic medical examination process and investigatory interviews and shall provide emotional support, crisis intervention, information and referrals.
- Document in written reports that include a description of the physical and testimonial evidence, the reasoning behind the credibility assessments, and investigate facts and findings.

Criminal Investigations

When criminal investigations are conducted, the facility must:

- Cooperate and coordinate with investigators and stay informed about the progress of the investigation. 28 CFR 115.371(m).
- Document the criminal investigation in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible. 28 CFR 115.371(h).

Emergency and Ongoing Medical and Mental Health Services

The alleged victim of sexual assault or attempted sexual assault must be provided mental health assistance and counseling as determined necessary and appropriate. 28 CFR 115.382(a). Youth

victims of sexual abuse will be offered timely access to and information about emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate. 28 CFR 115.382(c). All medical and mental health treatment services will be provided at no charge to the victim. 28 CFR 115.382(d).

Note: Youth may decline a rape kit or any other medical services offered.

Following emergency response and (if applicable) completion of a rape kit, youth believed or determined to have been the victim of a sexual assault must also be examined by medical staff for possible injuries, regardless of when the alleged sexual assault occurred.

The facility director or designee is responsible for ensuring that all youth who have been victimized by sexual abuse are offered a medical and mental health evaluation, and as appropriate, treatment. 28 CFR 115.383(a).

The evaluation and treatment of the alleged victim shall include, as appropriate:

- Follow-up services.
- Treatment plans.
- Referrals for continued care following their transfer to placement or other facilities or their release.

The medical and mental health services provided must be consistent with the community level of care. 28 CFR 115.383(c).

Youth victims of sexually abusive vaginal penetration shall be offered pregnancy tests. 28 CFR 115.383(d). If pregnancy results from the sexual abuse, the victim shall receive timely and comprehensive information about and timely access to all lawful pregnancy related medical services. 28 CFR 115.383(e).

The facility director or designee is responsible for ensuring that a mental health evaluation is conducted for all known youth-on-youth abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners. 28 CFR 115.383(h).

**INVESTIGATION
DISPOSITION****Prison Rape
Elimination Act
(PREA)**

Facility staff are required to monitor the conduct and treatment of youth or staff who reported the sexual abuse and of youth who were reported to have suffered sexual abuse for at least 90 days following the report of sexual abuse. 28 CFR 115.361(c). Staff shall use the MDHHS-5799-PREA, Retaliation Monitoring Log, to determine if there are changes that may suggest possible retaliation by youth or staff and must act promptly to remedy any such retaliation.

Pursuant to Prison Rape Elimination Act (PREA), National Standards for Juvenile Facilities, 28 CFR 115.373, following an investigation into a youth's allegation of sexual abuse, designated facility staff are responsible for informing the alleged victim whether or not the allegation has been:

- Substantiated.
- Unsubstantiated.
- Unfounded.

If the investigation was conducted by an outside agency, the facility director or designee is responsible for requesting the relevant information from the investigative agency in order to inform the youth of the findings. 28 CFR 115.373(b).

The facility director or designee ensures that incidents of sexual abuse, findings from investigations and other pertinent information is reported to the youth's court of jurisdiction, the youth's worker, to the youth's parent or legal guardian and to the youth's attorney. 28 CFR 115.361(e)(1).

All notifications or attempted notifications shall be documented and stored. 28 CFR 115.373(e).

Note: The facility director or designee is not obligated to inform the youth, if the youth is released from the facility's custody.

Allegations Against Staff

Pursuant to Prison Rape Elimination Act (PREA), National Standards for Juvenile Facilities, 28 CFR 115.373 (c)(1)-(4), following a youth's allegation that a staff member has committed

sexual abuse against the youth, designated facility staff are responsible for informing the youth (unless the facility director or designee has determined that the allegation is unfounded) whenever:

- The staff member is no longer posted within the youth's unit.
- The staff member is no longer employed at the facility.
- The facility director or designee learns that the staff member has been indicted on a charge related to sexual abuse within the facility.
- The facility director or designee learns that the staff member has been convicted on a charge related to sexual abuse within the facility.

Allegations Against Another Youth

Pursuant to Prison Rape Elimination Act (PREA), National Standards for Juvenile Facilities, 28 CFR 115.373(d)(1)-(2), following a youth's allegation that he or she has been sexually abused by another youth, designated facility staff are responsible for informing the alleged victim whenever:

- The facility director or designee learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility.
- The facility director or designee learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.

DOCUMENTATION

All contacts made as a result of **any** investigation must be documented within five (5) business days of the contact. The documentation must include all individuals involved in the investigation as well as the specific details of any safety plans developed or reviewed as a result of the investigation.

RECORD RETENTION AND DISPOSAL

Closed/completed investigation files are to be retained.

Closed/completed investigation files are purged:

- Seven years after completion when criminal or administrative action is taken or, when applicable, in compliance with collective bargaining agreements.
- One year after completion with no disciplinary action taken.
- Closed investigations involving state operated facility staff resulting in no adverse action are destroyed in accordance with the Bullard-Plawecki Act.

PREA Record Retention

All written reports are to be retained for as long as the alleged abuser resides or is employed by the facility, plus five years.

FORMS

[MDHHS-5799-PREA, PREA Retaliation Monitoring Log.](#)

[MDHHS-5809-PREA, Prison Rape Elimination Act \(PREA\) Investigation Tool.](#)

[MDHHS-5810-PREA, Prison Rape Elimination Act \(RPEA\) Investigation Report.](#)

LEGAL BASE Federal

Juvenile Justice and Delinquency Prevention, 42 USC 5601 et seq.

Establishes the Office of Juvenile Justice and Delinquency Prevention to support local and state efforts to prevent delinquency and improve the juvenile justice system.

Prison Rape Elimination Act, National Standards for Juvenile Facilities, 28 CFR 115.371-115.373.

Provides reporting and investigative requirements for sexual abuse and sexual harassment allegations. Ensures that all allegations of sexual abuse and sexual harassment are investigated thoroughly and properly so that incidents are substantiated when they should be, both to deter these incidents and to increase reporting.

State**Bullard-Plawecki Employee Right to Know Act, MCL 423.501 et seq.**

Allows employees to review personnel records, provides criteria for the review; to prescribe the information which may be contained in personnel records and to provide penalties.

POLICY CONTACT

Facility supervisors or managers may submit policy clarification questions to: Juvenile-Justice-Policy@michigan.gov.